

LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

7016-4. DISCUSSION OF MEDIATION ALTERNATIVES.

Prior to the pre-trial status conference, counsel shall confer with the client and discuss the mediation program, and shall ask the client for authorization to participate in the mediation program.

7016-5. STATUS CONFERENCE.

(a) Each party appearing at the status conference shall be represented by an attorney (or the party, if unrepresented) who is expected to conduct the trial on behalf of such party.

(b) Parties appearing at the status conference shall be prepared to discuss the following:

- (1) state of discovery, including a description of completed discovery and a detailed schedule of all further discovery contemplated;
- (2) a discovery cut-off date;
- (3) a schedule of contemplated law and motion matters;
- (4) prospects for settlement;
- (5) whether the client has given authorization to participate in the mediation program as described in Local Bankruptcy Rule 7016-6;
- (6) any other issues affecting the status or management of the case.

7016-6. MEDIATION PANEL PROCEDURES.

(a) **LISTS OF MEDIATORS.** The judges of the court shall establish and maintain two lists of qualified persons who agree to serve as mediators in contested matters and adversary proceedings pending before the court. One list shall contain the names of those mediators who are entitled to compensation as outlined below (Compensated Mediation Panel), and the other will contain those who will serve without compensation (Voluntary Mediation Panel).

(b) **VOLUNTARY MEDIATION PANEL.** To volunteer for this program, a person shall submit an application to the San Diego County Bar Association, which in turn shall submit the same to the clerk. The application shall set forth the qualifications described in subsection (1) or (2) and shall conform in format to Local Form

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CSD 4001, *APPLICATION TO JOIN VOLUNTARY MEDIATION PANEL.*

- (1) **ATTORNEY QUALIFICATIONS.** In order to qualify for service on the Voluntary Mediation Panel, an attorney shall certify to the court that the attorney meets the following minimum qualifications:
 - (A) the attorney is an active member of the State Bar of California and is duly licensed to practice before the courts of the State of California and the Federal courts for the Southern District of California;
 - (B) the attorney has been admitted to practice in a state court for at least four (4) years; and
 - (C) the attorney has served as the attorney of record for at least three (3) bankruptcy cases from commencement through conclusion (i.e.; confirmation of a plan or discharge) or has served as the attorney of record for a party in interest for at least three (3) or more adversary proceedings or contested matters from commencement through completion (i.e.; judgment, order, or stipulated settlement); or has had other substantially equivalent bankruptcy experience.
- (2) **NON-ATTORNEY QUALIFICATIONS.** In order to qualify for service on the Voluntary Mediation Panel, a non-attorney shall certify to the court that the following qualifications are met:
 - (A) the person is a member of the panel of trustees or examiners maintained by the Office of the United States Trustee; or
 - (B) the person is a Certified Public Accountant in the State of California; and
 - (C) in addition, the person complying with the requirements of subsection (A) or (B) above shall also demonstrate service to a bankruptcy estate in at least ten (10) asset estates as trustee, and/or in at least ten (10) cases as bankruptcy examiner or accountant for a trustee or debtor-in-possession from commencement through completion of such case; or has other substantially equivalent bankruptcy experience.

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(c) **COMPENSATED MEDIATION PANEL.**

- (1) To apply for this program, a person shall submit an application to the San Diego County Bar Association, which in turn shall submit the same to the clerk. The application shall set forth the qualifications described in subsection (A) and (B) below and shall conform in format to Local Form CSD 4000, *APPLICATION TO JOIN COMPENSATED MEDIATION PANEL*. Effective September 8, 1997, mediators shall be entitled to join the Compensated Mediation Panel if they have completed twenty-five (25) hours of mediation training provided by the San Diego Mediation Center or an equivalent qualified training center consistent with the California Dispute Resolution Act (Title 16 California Code of Regulations, Sections 3615 through 3635, and Sections 465 through 467.7 of the California Business Professions Code). In addition, mediators seeking compensation must, within the calendar year preceding the year in which the mediation is conducted, satisfy one of the following:

- (A) conduct two (2) bankruptcy mediations or six (6) hours of mediation from any source; or,
- (B) attend a half-day refresher program provided by the San Diego Mediation Center or an equivalent qualified center consistent with the California Dispute Resolution Act.

- (2) No later than December 15 of the year prior to the calendar year they will conduct compensated mediation, compensated mediators must submit to the Chief Judge of the Bankruptcy Court a renewal application for service on the Compensated Mediation Panel which certifies that they have satisfied the requirements set forth herein.

(d) **LISTS OF ELIGIBLE MEDIATORS.** Two lists of eligible mediators shall be submitted to the clerk once per calendar quarter by the San Diego County Bar Association.

- (1) The lists to be submitted no later than March 15 shall be effective from April 1 through June 30.
- (2) The lists to be submitted no later than June 15 shall be effective from July 1 through September 30.
- (3) The lists to be submitted no later than September 15 shall be effective from October 1 through December 31.

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- (4) The lists to be submitted no later than December 15 shall be effective from January 1 through March 31 of the following year.

(e) **ASSIGNMENT TO MEDIATION.**

- (1) A case may be assigned to mediation by order of the court at a status conference or other hearing. If a case is assigned to mediation, the parties attending the status conference shall be presented with the current lists of eligible mediators. If the parties cannot agree, the court shall appoint a mediator and alternates from the lists.
- (2) Local Form CSD 4002, *ORDER APPOINTING MEDIATOR AND ASSIGNMENT TO MEDIATION*, shall be used to assign a matter to mediation. The original shall be retained in the court's file. The clerk will mail a copy to the mediator and to each party.

(f) **MEDIATION PROCEDURE.**

- (1) **TIME AND PLACE.** The mediator shall fix the time and place for the mediation conference, and any adjourned session. The time and place selected shall be reasonably convenient for the parties, and the parties shall be given at least fifteen (15) days written notice of the initial conference. The conference shall be scheduled as soon as practicable but in no event more than forty-five (45) days after the mediator has been notified of the appointment. The mediator may, upon written stipulation of the parties filed with the court, grant one continuance of the conference, provided that the continuance granted does not extend the date of the conference to a date more than seventy-five (75) days after the mediator has been notified of the appointment.
- (2) **SUBMISSION OF COMPLETED CASE QUESTIONNAIRES.** Each party shall provide the mediator with a completed case questionnaire in the format of Local Form CSD 4003, *CASE QUESTIONNAIRE IN CONNECTION WITH MEDIATION PROCEDURE*. The case questionnaire shall be served on the mediator and all other parties not less than seven (7) calendar days prior to the date noticed for the mediation conference as set forth in subsection (1) above.
- (3) **ATTENDANCE AND PREPARATION REQUIRED.** The attorney who is primarily responsible for each party's case shall personally

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attend the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following in detail and in good faith:

- (A) all liability issues;
 - (B) all damage issues; and
 - (C) the position of their client relative to settlement.
- (4) **MEDIATION COMPENSATION.** A mediator who meets the requirements of paragraph (c) above is entitled to compensation at the rate of \$200 per each half-day mediation session except, however, for the first half-day of the mediation session (3.5 hours) which shall be conducted free of charge. The mediation fee shall be borne equally by all parties attending the mediation. The \$200 fee is to be paid at the beginning of each successive session. Unrepresented litigants are required to pay in cash or by cashiers check. Those parties represented by an attorney may pay with a check from the attorney's account.
- (5) **PARTIES TO BE AVAILABLE.** All individual parties who reside within the County of San Diego shall personally attend the mediation conference unless excused by the mediator for cause. Parties, other than individuals, whose principal place of business is located in San Diego County, shall have a representative appear with authority to settle. Individuals and other parties who neither reside in San Diego County nor have their principal place of business located therein, shall be available for conference with their counsel to the mediator by telephone. The mediator shall decide when the parties are to be present in the conference room.
- (6) **FAILURE TO ATTEND.** Willful or unexcused failure to attend the mediation conference shall be reported to the court by the mediator and may result in the imposition of sanctions by the court.
- (7) **PROCEEDINGS PRIVILEGED.** All proceedings or writings of the mediation conference, including the case questionnaire, mediator's settlement recommendation, plus any statement made by any party, attorney or other participant, shall in all respects be privileged and not reported, recorded, placed in evidence, made known

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to the trial court or jury or construed for any purpose as an admission against interest. No party shall be bound by anything said or done at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement. Federal Rule of Evidence 408 applies herein. A report of a failure to attend a mediation conference does not fall within this privilege.

(8) **DUTY OF COUNSEL.** The client shall be advised of the fact that the mediator is a qualified person and has volunteered to act as an impartial mediator, without compensation, in an attempt to help the parties reach an agreement and avoid the time, expense and uncertainty of trial. If the mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the client.

(9) **DUTY OF MEDIATOR.** The mediator shall have the duty and authority to establish the time schedule for mediation activities, including a schedule for the parties to act upon the mediator's recommendation, having in mind that the purpose of this order is prompt dispute resolution. The mediator shall have no obligation to make any written comments or recommendations, but may have the discretion to provide a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the clerk or made available in whole or in part, directly or indirectly, either to the court and/or the jury.

(g) **PROCEDURE UPON COMPLETION OF MEDIATION SESSION.** Upon the conclusion of the first mediation session where all parties are in attendance, the following procedures shall be followed:

(1) If the parties have reached an agreement regarding the disposition of the proceeding, the parties shall designate a party to prepare a stipulation to dismiss, or enter a judgment on agreed terms, or continue the mediation session to a date convenient to all parties and the mediator. The party preparing the stipulation shall submit the stipulation, once fully executed by all parties, to the court for approval.

(2) The mediator shall prepare and file with the clerk, within ten (10) days, a Local Form CSD 4004, *MEDIATOR'S*

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CERTIFICATE OF COMPLIANCE, indicating whether a settlement was reached, and, if so, whether there was compliance with the settlement and mediation requirements of this rule.